

BRIG FLY.

LETTER FROM THE ASSISTANT CLERK OF THE COURT OF CLAIMS TRANSMITTING A COPY OF THE CONCLUSIONS OF LAW AND OF FACT IN THE FRENCH SPOILIATION CASES RELATING TO THE VESSEL BRIG FLY, JAMES MERRIHEW, MASTER.

FEBRUARY 20, 1904.—Referred to the Committee on Claims and ordered to be printed.

COURT OF CLAIMS,
Washington, D. C., February 19, 1904.

SIR: Pursuant to the order of the Court of Claims, I transmit herewith the conclusions of fact and of law filed under the act of January 20, 1885, in the French spoliation claims set out in the annexed findings by the court relating to the vessel brig *Fly*, James Merrihew, master.

I am, very respectfully, yours, etc.,

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

Hon. JOSEPH G. CANNON,
Speaker of the House of Representatives.

[Court of Claims. French spoliations. Act of January 21, 1885; Stat. L., 283. Brig *Fly*, James Merrihew, master.]

No. of
case.

Claimant.

1083. John A. McCarthy, administrator of James Barr, *v.* The United States.
790. The President and Directors of the Insurance Company of North America *v.* the United States.
1083. John A. McCarthy, administrator of James Stuart, *v.* The United States.

PRELIMINARY STATEMENT.

These cases were tried before the Court of Claims on the 30th day of April, 1902. The claimants were represented by William T. S. Curtis, Theodore J. Pickett, and Leonard Myers, esqs., and the United States, defendants, by the Attorney-General, through his assistant in the Department of Justice, John W. Trainer, esq., with whom was Assistant Attorney-General Louis A. Pradt.

CONCLUSIONS OF FACT.

The court, upon the evidence and after hearing the arguments and considering the same with the briefs of counsel on each side, determine the facts to be as follows:

I. The brig *Fly*, James Merrihew, master, sailed on a commercial voyage on or about the 22d day of December, 1799, bound from Teneriffe to Philadelphia.

While peacefully pursuing said voyage she was captured on the high seas on or about the 24th day of January, 1800, by the French privateer *La Soleil*, Capt. Francis Lafete, and carried into Guadaloupe, and on February 17, 1800, said vessel and the cargo were condemned by the French prize court sitting at Basse Terre, whereby the same became a total loss to the owners thereof.

It appears that the *Fly* had on board at the time of capture, passport, rôle d'équi-

page, register, and other ship's papers, and that the master was placed on the French privateer and was thus prevented from defending the property at the trial.

II. The brig *Fly* was a duly registered vessel of the United States of 1121 $\frac{5}{8}$ tons burthen; was built in Virginia in the year 1799, and was the property of the firm of Stewart & Barr, composed of James Stewart and his son-in-law, James Barr, both citizens of the United States, resident merchants of Philadelphia.

III. The cargo of the *Fly* consisted of 35 pipes, 50 hogshheads, and 40 quarter casks of wine, which cost the owners, the said Stewart & Barr, 990 pounds sterling, or \$4,811.40.

IV. The loss to the firm of Stewart & Barr by reason of the capture and condemnation of the brig *Fly* was as follows:

Value of the vessel	\$3,360.00
Freight earnings	1,867.00
Value of cargo	4,811.40
Premium of insurance paid	1,090.50
Amounting in all to	11,128.90
Less insurance received	5,684.00
Leaving a net loss of	5,444.90

V. October 24, 1799, the Insurance Company of North America effected two policies of insurance for the said firm of Stewart & Barr in the sum of \$5,800, \$2,500 being on the vessel and \$3,300 on the cargo, at a premium cost to said owners of \$1,090.50, and thereafter, on April 21, 1800, the said insurance company paid to the insured the sum of \$5,684, or 98 per cent, as and for a total loss.

VI. The claimants herein have produced letters of administration upon the estates of the parties for whom they appear, and have otherwise proved to the satisfaction of the court that the persons for whose estates they have filed claims are in fact the same persons who suffered loss by the seizure and condemnation of the brig *Fly*, as set forth in the preceding findings.

Said claims were not embraced in the convention between the United States and the Republic of France, concluded on the 30th of April, 1803. They were not claims growing out of the acts of France allowed and paid in whole or in part under the provisions of the treaty between the United States and Spain, concluded on the 22d of February, 1819, and were not allowed in whole or in part under the provisions of the treaty between the United States and France of the 4th of July, 1831.

The claimants, in their representative capacity, are the owners of said claims, which have never been assigned.

CONCLUSIONS OF LAW.

The court decides as conclusions of law that said seizure and condemnation were illegal, and the owners and insurers had valid claims of indemnity therefor upon the French Government prior to the ratification of the convention between the United States and the French Republic concluded on the 30th day of September, 1800; that said claims were relinquished to France by the Government of the United States by said treaty in part consideration of the relinquishment of certain national claims of France against the United States, and that the claimants are entitled to the following sums from the United States:

John A. McCarthy, administrator of James Barr, two thousand seven hundred and twenty-two dollars and forty-five cents	\$2,722.45
The president and directors of the Insurance Company of North America, five thousand six hundred and eighty-four dollars	5,684.00
John A. McCarthy, administrator of James Steuart, two thousand seven hundred and twenty-two dollars and forty-five cents	2,722.45
Total amount recoverable, eleven thousand one hundred and twenty-eight dollars and ninety cents	11,128.90

BY THE COURT.

Filed May 12, 1902.

A true copy of findings as amended.

Test this 19th day of February, 1904.

[SEAL.]

JOHN RANDOLPH,
Assistant Clerk Court of Claims.